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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/739,206	12/19/2003	Sharon D. Patrick	DET1927	9873

7590

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EXAMINER

STERLING, AMY JO

ART UNIT	PAPER NUMBER
3632	

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/739,206

**Applicant(s)**

PATRICK, SHARON D.

**Examiner**

Amy J. Sterling

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This is the second non-final Office Action for application number 10/739,206 Tissue Paper Supporting Assembly, filed on 12/19/03. Claims 1-12, 15-21 are pending. This is the second non-final Action is in response to applicant's reply dated 9/8/04. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 112***

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 cites, "coupler comprises a pair of screws", claim 15 recites, "a coupler attached to an upper end of said legs", and claim 16 recites "each of the legs having a hole...the screws being extendable through the holes". It is unclear how the coupler which is attached above the upper end of the legs has screws which extend through holes in the legs. The claim was examined as if the holes were cited to be in the coupler.

#### ***Claim Rejections - 35 USC § 102***

Claims 1, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 2992854 to Berlin.

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The patent to Berlin discloses a device having a panel (46), the panel having a rear edge, a forward edge and a pair of lateral side edges, a pair of legs (42, 44) the legs (42, 44) having a lower end being attached to and extending upwardly from the rear edge, the legs (42, 44) being spaced from each other such that each of the legs is positioned adjacent to one of the side edges, each of the legs being positioned in a plane oriented substantial perpendicular to a plane of the panel (46), a bracket (48) attached to the legs and extended over the panel (46) such that a plane of the bracket is oriented substantially parallel to the plane of the panel, a coupler (50, 52) attached to an upper end of the legs for selectively coupling the legs to a vertical surface and including teaching that a brace (40) is further attached to the legs.

The method claims are inherent from the structure cited above.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

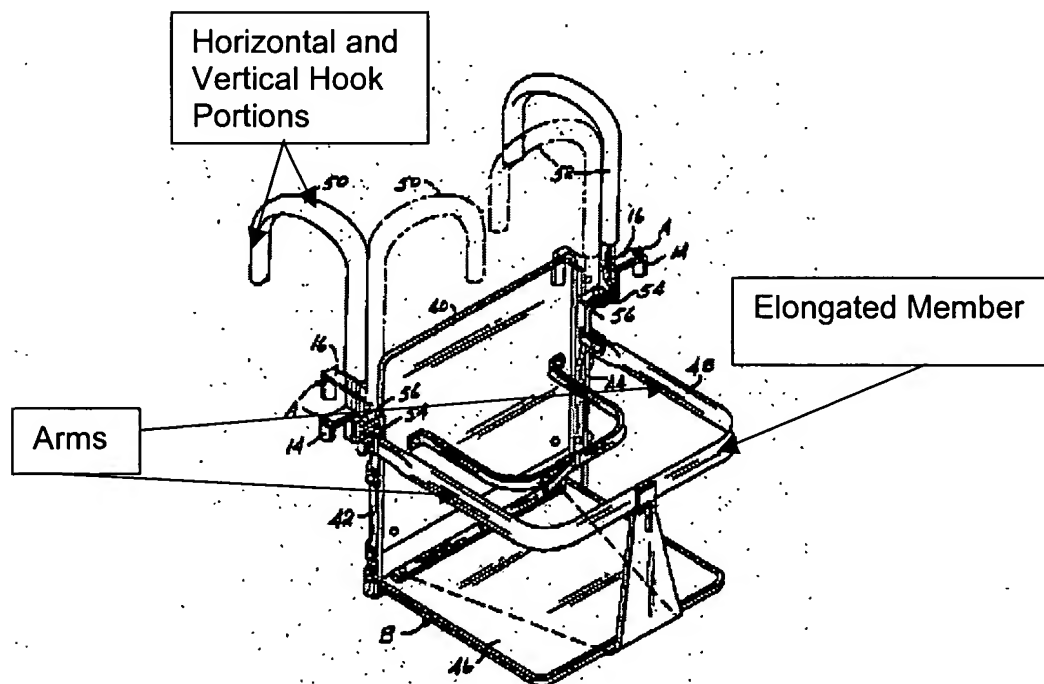
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 2992854 to Berlin as applied to claims 1 above.

Berlin discloses the basic inventive concept including wherein the bracket (48) has an elongated member (See drawing Below) which is substantially the same length

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as the length of the panel, the bracket having a pair of arms (See Drawing) attached to and extending away from opposite ends of the elongated member, the arms being orientated perpendicular to the elongated member, each of the arms having a free end with respect to the elongated member, each of the free ends being attached to one of an outer edge of the legs. Berlin also discloses that the coupler (50, 52) includes a pair of hooks attached to the legs and extending in an opposite direction than the bracket (48), the hooks having a horizontal portion and a downwardly extending vertical portion spaced from the legs.



Berlin discloses the claimed invention except for the desired ranges of the dimensions, (width from rear to forward edge is 1 to 2 inches, length between 4 to 5 inches, length of panel between 9 and 10 inches, and the height between 4 to 5 inches). It would have been obvious to one having ordinary skill in the art at the time the

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invention was made to have this range, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. See In re Aller, 105 USPQ 233. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made from the teachings of Berlin to have any dimensions that is within a workable range, in order to optimize the device.

Claims 11-17, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 2992854 to Berlin as applied to claims 1, 2 6 and 9-11 and further in view of United States Patent No. 6329583 to May.

Berlin discloses the applicant's basic inventive concept, all the elements which are shown above.

Berlin does not show a support attached to and extending between the vertical portion of the hooks, the support having at least two apertures/holes and screws extending therethrough, each aperture having an axis orientated perpendicular to the plane of the legs.

May teaches a device with a pair of legs (22) and a pair of hooks (23) with a vertical portion that teaches a support attached extending between the vertical portion of the hooks, the support (24) having at least two apertures/holes (near 25) and screws (25) extending therethrough, each aperture having an axis orientated perpendicular to the plane of the legs (22), the apertured support used so that further support may be added to the device when it is attached to the vertical surface. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made

from the teachings of May to have added this apertured support, in order to add further support to the device and to make it sturdier. The method claims being inherent from the structure cited above.

### ***Response to Arguments***

This action has been made non-final because it seems that claim 11 had been improperly rejected under 102(b) to Berlin. This has now been corrected.

In response to applicant's argument that the support (24) taught in the May reference does not serve the function of a support because the function of the element is to form a loop to retain the shoulder bars on a person and not to prevent rotation of the shoulder bars. In response to applicant's argument that the references fail to show certain features or functions of applicant's invention, it is noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

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the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, the suggestion to combine would be to further support the coupler of Berlin, in a sturdier fashion to the vehicle seat or desired mounting surface. This would not ruin the intended purpose in that the support of May is removable and may be removed if the desired operation is for the couplers to then become rotatable.

In response to applicant's argument that Berlin in combination with May is a combination of nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

In this case, both devices are support brackets in which a person/device may be supported by a person/device. Both cases are clearly brackets that support and therefore are within the same art.

### ***Conclusion***

Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 703-308-3271. The examiner can normally be reached (M-F 8



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a.m.-5:00 p.m.). If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine number for the Technology center is 703-305-3597 or 703-305-3598 (formal amendments) or 703-308-3519 (informal amendments/communications).

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 703-308-2168.



AJS  
Amy J. Sterling  
10/19/04



ANITA KING  
PRIMARY EXAMINER